BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHARLES N. HARSHMAN	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,056,619
OPTIMUS CORPORATION[1]	)	
Respondent	)	
AND	)	
	)	
HARTFORD FIRE INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Claimant requests review of the April 13, 2012 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore (ALJ). David H. Farris, of Wichita, Kansas, appeared for claimant. Timothy A. Emerson, of Overland Park, Kansas, appeared for the respondent.

The record on appeal is the same as that considered by the ALJ and consists of the preliminary hearing transcript with exhibits taken October 27, 2011. Dr. Paul Stein's independent medical examination dated February 27, 2012, and all pleadings contained in the administrative file.

ISSUES

Claimant had left and right knee injuries and surgeries in 2001 and 2002. After recovering from those surgeries claimant returned to the same work for respondent which required standing on concrete his entire work shift. In March 2011, claimant had left shoulder surgery and was returned to light duty sit down work in the office. Upon his return to his regular job duties which required standing on concrete, he developed swelling and pain in both knees. Claimant alleged he had suffered new injuries to his bilateral knees. Respondent argued the claimant's current bilateral knee conditions are an expected natural and probable consequence of his prior knee injuries in 2001 and 2002.

[1] Claimant works for Chanute Manufacturing, which is a part of Optimus Corporation.

The ALJ denied claimant's preliminary hearing requests for compensation after finding that claimant's current problems are the natural and probable consequence of his prior knee injuries. The ALJ noted that because claimant only worked three days after returning to regular duty before the onset of pain, it was unlikely claimant would have experienced knee complaints, without trauma, but for his pre-existing knee injuries. Therefore, the ALJ concluded that under the doctrine of *Logsdon*[2], the current complaints relate back to the old claims.

The claimant requests review of whether the ALJ erred and exceeded his authority in denying the benefits requested by the claimant. Claimant contends that the ALJ's Order should be reversed as he has met his burden in proving that the current need for treatment of his bilateral knee conditions is his work for Chanute Manufacturing beginning in April 2011.

Respondent argues that the ALJ's Order should be affirmed as the effects of claimant's injuries and their treatment with working for extended periods of time on concrete flooring contributed to the development of arthritic changes affecting the knees and represent a natural and probable consequence of the prior knee injuries.

FINDINGS OF FACT

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant has worked for Chanute Manufacturing for over 23 years as a Fabricator 1. Claimant testified to sustaining a injury to his right knee in 2001 and an injury to his left knee in 2002. He had surgery after each incident. Claimant filed workers compensation claims and received an award of compensation with medical left open. Claimant was released and continued to work for Chanute Manufacturing.

Claimant testified that after he returned to work his bilateral knee condition gradually got worse over the years. But claimant did not seek medical treatment, and continued to work eight hours a day on his feet. Claimant had not complained of any problems with his knees from 2002 to April 2011. He testified that he didn't feel during that time that his knees were bad enough to report anything.

Claimant had shoulder surgery on March 2011 and was put on light duty for a month. During this light duty claimant sat for eight hours out of the day making time cards. When he was released he went back to his regular duty and was on his feet eight hours a day. Claimant testified that it wasn't long before he began to have a pins and needle sensation in his knees from standing on the concrete floor. After three days, claimant went

[2] *Logsdon v. Boeing Co.*, 35 Kan. App.2d 79, 128 P.3d 430 (2006).

to the office and reported that he needed to see a doctor about problems with his knees. He also filled out an accident report on May 3, 2011.[3]

Claimant believes his knee condition is worse now than it was before his shoulder surgery. He was sent to the company physician, Dr. Madril, on May 10, 2011, with bilateral knee pain and swelling. Claimant received cortisone injections and it was also suggested that claimant see a specialist. But respondent would not authorize any further treatment after May 13, 2011. He has yet to see the specialist and continues to work the same job. Claimant continues to have swelling in his knees and since the cortisone injection, he feels like his knees want to go out on him.

Dr. Fluter initially opined that claimant's current condition was caused by a combination of his prior injuries and working for extended periods on concrete flooring. Dr. Fluter then clarified that claimant's current condition is related more to his usual and customary job duties rather than being a natural or probable consequence of the injuries occurring in 2001 and 2002.[4]

The ALJ, on November 3, 2011, ordered Dr. Paul Stein to perform an examination of claimant to determine if claimant's need for treatment is a result of his previous injuries or the result of a new problem that arose in early 2011. After reviewing claimant's medical records and performing an examination of claimant, Dr. Stein reported in pertinent part:

> In regard to the right knee, the current symptomatology is a result of aggravation of preexisting degenerative arthritis by the change in activity in April of 2011. The current symptomatology is more related to the change in activity occurring in 2011 as well as the natural history of degenerative arthritis than to the specific injury in August of 2001. In other words, it is more of a recent injury.
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> . . .
>
> The current symptomatology [left knee] is related to degenerative disease in the medial compartment of the knee which is a result of the natural progression of degenerative arthritis unrelated to the injury of 2002 but which was aggravated by the change in work activity in April of 2011. The current left knee pain and requirement for treatment is a result of the more recent exacerbation and unrelated to the injury of 2002.[5]

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[3] P.H. Trans., Resp. Ex. 1.

[4] P.H. Trans., Claimant's Ex. 1.

[5] Dr. Stein's February 27, 2012, Independent Medical Examination Report at 5.

In this case claimant alleged repetitive injury and his date of accident would be May 5, 2011, when he provided written notice to respondent of the injury.[6] The law in effect on this date of accident is well settled in this state and provides that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.[7] The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition.[8]

Dr. Stein, the court ordered independent medical examiner, concluded claimant's work activities in April 2011 aggravated the preexisting condition in both of claimant's knees. Dr. Fluter concluded claimant's current condition was related to his work activities and was not a natural and probable consequence of claimant's knee injuries in 2001 and 2002. This Board Member finds claimant has met his burden of proof to establish that he suffered accidental injury arising out of and in the course of his employment.

Because claimant worked nine years without seeking medical treatment for either knee, it cannot be said that the prior knee injuries had never fully healed. Consequently, the rationale of the *Logsdon* case is inapplicable to this fact situation especially in view of the fact that Dr. Fluter reported claimant's current condition was not a natural and probable consequence of the two prior knee injuries.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[9] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2010 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Bruce E. Moore dated April 13, 2012, is reversed and the matter remanded for additional hearings, if necessary, to address claimant's compensation requests.

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[6] See K.S.A. 2010 Supp. 44-508(d).

[7] *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984)*; Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

[8] *Hanson v. Logan U.S.D. 326*, 28 Kan. App.2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App.2d 510, 949 P.2d 1149 (1997).

[9] K.S.A. 44-534a.

IT IS SO ORDERED.

Dated this _____ day of June 2012.

_____
HONORABLE GARY R. TERRILL
BOARD MEMBER

c: David H. Farris, Attorney for Claimant
lhathaway@hzflaw.com
dfarris@hzflaw.com

Timothy A. Emerson, Attorney for Respondent and its Insurance Carrier
timothy.emerson@thehartford.com
denise.allen@thehartford.com

Bruce E. Moore, Administrative Law Judge